

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE NORTHEAST OHIO COALITION, .  
FOR THE HOMELESS, et al., .  
PLAINTIFFS, . . . . .  
VS. . . . .  
JON HUSTED, in his official .  
capacity as Secretary .  
of the State of Ohio, .  
DEFENDANT, .  
and .  
STATE OF OHIO, .  
INTERVENOR-DEFENDANT . . . . .

**TRANSCRIPT OF TELEPHONIC 65.1 CONFERENCE  
BEFORE THE HONORABLE ALGENON L. MARBLEY  
UNITED STATES DISTRICT JUDGE**

## APPEARANCES:

FOR THE PLAINTIFFS: CAROLINE GENTRY, ESQ.  
DANIEL B. MILLER, ESQ.  
SUBODH CHANDRA, ESQ.  
STACEY M. LEYTON, ESQ.  
STEPHEN P. BERZON, ESQ.  
MICHAEL J. HUNTER, ESQ.  
CATHRINE J. HARSHMAN, ESQ.  
DONALD J. MCTIGUE, ESO.

FOR THE RELATORS: W. STUART DORNETTE, ESQ.  
JOHN B. NALBANDIAN, ESQ.

APPEARANCES CONTINUED:

FOR THE DEFENDANT JON HUSTED:                   AARON D. EPSTEIN, ESQ.  
   PAMELA VEST, ESQ.

FOR THE DEFENDANT STATE OF OHIO:               PEGGY W. CORN, ESQ.  
   DAVID LEIBERMAN, ESQ.

— — —

1 WEDNESDAY AFTERNOON SESSION

2 MAY 9, 2012

3 - - -

4 THE COURT: Good afternoon. Would counsel please  
5 identify themselves for the record beginning with counsel  
6 for the plaintiffs.

7 MS. GENTRY: Caroline Gentry for the plaintiffs  
8 NEOCH and SEIU.

9 MR. MILLER: This is Dan Miller for plaintiffs NEOCH  
10 and SEIU.

11 MR. CHANDRA: Subodh Chandra for the plaintiffs  
12 NEOCH and SEIU, as well as, Your Honor, with your  
13 permission, Ashley K. Sletvold from our office whose  
14 admission to the Southern District of Ohio will be applied  
15 for imminently.

16 MS. LEYTON: This is Stacey Leyton, and I'm here  
17 with Stephen Berzon representing SEIU 1199.

18 MR. HUNTER: Your Honor, this is Mike Hunter with  
19 Cathrine Harshman also representing SEIU 1199.

20 MR. MCTIGUE: And this is Donald McTigue  
21 representing the Ohio Democratic Party.

22 THE COURT: All right. Counsel for the relators.

23 MR. DORNETTE: Stuart Dornette and John Nalbandian,  
24 Your Honor.

25 THE COURT: Mr. Dornette, are you out of Dayton?

1 MR. DORNETTE: Cincinnati.

2 THE COURT: With whom?

3 MR. DORNETTE: Taft Stettinius & Hollister.

4 THE COURT: Okay.

5 MR. EPSTEIN: Your Honor, this is Aaron Epstein and  
6 Pamela Vest for Secretary of State Husted.

7 THE COURT: All right.

8 MS. CORN: And this is Peggy Corn and Dave Leiberman  
9 who is going to be filing appearance *pro hac vice* soon for  
10 the State of Ohio.

11 THE COURT: Is that everyone?

12 For the record, this is on the record. I have  
13 Mrs. Evans, my court reporter here, and I also have my law  
14 clerk Mr. Robert Haferd.

15 Ms. Gentry, you requested this by filing your urgent  
16 motion -- your words, not mine -- to enjoin the state court  
17 proceeding, and for an order to show cause why relators Tom  
18 Niehaus and Louis Blessing Jr. should not be held in  
19 contempt. Do you want to first set the factual background  
20 for your motion?

21 MS. GENTRY: Yes, Your Honor. I'll try to do so as  
22 briefly as possible.

23 As the Court knows, we entered into a consent decree  
24 two years ago. "We" being the plaintiffs NEOCH, SEIU and  
25 intervenor-plaintiff ODP; and also defendant Secretary of

1 State and defendant State of Ohio. That consent decree is  
2 Docket No. 210.

3 We became aware that last month, I believe it was  
4 April 16th, the relators, who are two Republican  
5 legislative leaders Thomas Niehaus and Louis Blessing, had  
6 filed an action in the Ohio Supreme Court to essentially  
7 invalidate the consent decree. They're seeking a Writ of  
8 Mandamus that would order Secretary Husted not to issue the  
9 directives that are required by the decree, and instead to  
10 issue directives to the boards of election to follow Ohio  
11 election law without regard to prior commitment by the  
12 secretary of state, which we interpreted meaning not to  
13 follow the consent decree.

14 We are before you today seeking an injunction under  
15 the All Writs Act to stop the two relators from proceeding  
16 with the Ohio Supreme Court action. It is an urgent motion  
17 because the answer -- Secretary Husted's answer is due  
18 tomorrow, under our calculations, and the Ohio Supreme  
19 Court could rule any time after that. Under Ohio Supreme  
20 Court Rule 10.5(C), they could either set a briefing  
21 schedule or issue a peremptory writ on the merits  
22 immediately, and that's why we believe it's imperative to  
23 get a ruling on the injunction before the Ohio Supreme  
24 Court acts, and that's why we've sought very quick action.

25 THE COURT: All right. My first question to you,

1 Ms. Gentry, is whether this is ripe for me at this time.  
2 You've indicated that one of the bases for your motion is  
3 that the relators are in violation of the consent decree by  
4 going to the Ohio Supreme Court, filing the mandamus  
5 action. But nothing has happened -- well, let me rephrase  
6 that. What has happened that actually presents a case or  
7 controversy before the Court? What has happened that is in  
8 derogation or in violation of my consent decree?

9 MS. GENTRY: Your Honor, it's our belief that the  
10 act of filing the lawsuit seeking a state court order that  
11 would nullify the consent decree is itself an act that  
12 triggers a case or controversy. And, Your Honor, I think  
13 if the Court were to wait until the Ohio Supreme Court  
14 actually issued a decision, that could be very problematic.  
15 If there are two conflicting decisions out there, then an  
16 injunction is no longer possible, and then instead we have  
17 to wrestle with how to reconcile the two conflicting  
18 decisions and what that means for the Ohio election system.  
19 The only time we could seek an injunction to prevent a  
20 conflicting decision would be right now.

21 THE COURT: Mr. Dornette, your response.

22 MR. DORNETTE: Yes, Your Honor. I think your  
23 question I would answer in a different way and, that is,  
24 number one, the order or the consent decree that has been  
25 entered -- and it was entered two years ago -- does not

1 tell Mr. Niehaus, the president of the Ohio Senate, or  
2 Mr. Blessing, Speaker Pro Tempore of the Ohio House of  
3 Representatives, to do or not do anything. So they are not  
4 in violation of that order and haven't been in violation of  
5 that order.

6 The issue which they have presented to the Ohio  
7 Supreme Court is a simple question of the authority of an  
8 elected constitutional officer in Ohio to enter into a  
9 consent decree that has the effect of amending Ohio  
10 statutes that were previously passed by the Ohio General  
11 Assembly and signed by the governor.

12 THE COURT: If that's the case, then any time that a  
13 federal court acts, isn't that same argument available to  
14 you? Whether it's under HAVA or under the ADA or the ADEA  
15 or any of the other federal statutes under which a state  
16 citizen seeks redress, and if given redress, can't some  
17 state legislator claim that that particular act or law is  
18 not consistent with state law, and, therefore, go to court  
19 and file a Writ of Mandamus depending on the particular  
20 office of the state employee?

21 MR. DORNETTE: Your Honor, if there was a conflict  
22 between the federal law and the state law, the federal law  
23 under the supremacy clause would control on that. But here  
24 we do not have any finding in the consent decree that the  
25 Ohio statute has violated in any way federal constitution

1 or federal statutory law. We just have an agreement  
2 entered into by the secretary of state to amend the state  
3 law. That, I think, is very different from what you were  
4 postulating.

5 MS. GENTRY: Your Honor, may I respond to that?

6 THE COURT: Yes, you may.

7 MS. GENTRY: There are a number of cases that have  
8 held -- and I'm looking for the cites now -- that consent  
9 decrees typically do not contain findings of fact and  
10 conclusions of law. That's the point of having a  
11 settlement. The fact they don't have a finding of fact or  
12 conclusion of law does not in any way make it have lesser  
13 force than any other federal court order. It has just as  
14 much force of law as final judgment on the merits.

15 THE COURT: Mr. Dornette, I have one other -- just a  
16 practical question. This consent decree was entered into  
17 on April 19th, 2010, I believe.

18 MR. DORNETTE: Yes, Your Honor.

19 THE COURT: When was your suit filed?

20 MR. DORNETTE: April 16th of 2012.

21 THE COURT: Why did it take you -- I mean, nothing  
22 has changed in state law that wasn't exigent at the time  
23 this consent decree was entered into over two years ago.  
24 Why are you just now coming to court with this issue?

25 MR. DORNETTE: Your Honor, I think there has been

1           clarification in the interim as to the role of poll worker  
2           error in the counting of ballots. That was provided by a  
3           Supreme Court decision of last year after the consent  
4           decree was entered into. That was the State ex rel Painter  
5           versus Brunner case. But the issue of the timing really  
6           is -- certainly, we were not presented with this. Mr.  
7           Niehaus was not president of the Senate until a year and a  
8           half ago, and this has become something that is important  
9           to our clients, and it is something that -- I think there  
10           is not any sort of estoppel argument that can be presented  
11           on it.

12           THE COURT: That's certainly one of the questions  
13           that the Supreme Court may very well ask you --

14           MR. DORNETTE: Yes, Your Honor.

15           THE COURT: -- as opposed to me. But that's one  
16           matter about which I was curious.

17           Mr. Dornette, is it your position that there -- I  
18           want to be clear, that there has not been a violation of  
19           the consent decree?

20           MR. DORNETTE: I do not believe there has been a  
21           violation of the consent decree, no, Your Honor.

22           THE COURT: Mr. Epstein, do you have any response to  
23           either Ms. Gentry or Mr. Dornette?

24           MR. EPSTEIN: Not really, Your Honor. Secretary  
25           Husted is somewhat caught between conflicting directives

1 from the consent decree and the Ohio Supreme Court.

2 THE COURT: What directives does Secretary Husted  
3 have from the Ohio Supreme Court that conflicts with the  
4 consent decree?

5 MR. EPSTEIN: The decision from the Ohio Supreme  
6 Court in *Painter* that Mr. Dornette referenced held that  
7 under Ohio law, provisional ballots that are defective,  
8 that is, they don't meet the requirements of the law,  
9 cannot be counted even if the error is attributable to poll  
10 worker error. There are specific requirements in the  
11 consent decree that say that, in fact, those defective  
12 provisional ballots will be counted if they are -- if the  
13 error is attributable to poll worker error.

14 So there is a conflict between the terms of the  
15 consent decree and Ohio law as set forth by the Ohio  
16 Supreme Court. That said, we are the defendant slash  
17 respondent in all the litigation, and we don't choose the  
18 time or the forum. We're simply awaiting guidance and  
19 clarification.

20 THE COURT: Do you doubt that you are bound by the  
21 terms of the consent decree notwithstanding the fact that  
22 it was your predecessor and not Secretary Husted who  
23 entered into the consent decree?

24 MR. EPSTEIN: Your Honor, we believe that until you,  
25 or the Sixth Circuit, or some other authority amends or

1 discontinues the consent decree, the office of the  
2 secretary of state is bound by it.

3 THE COURT: All right.

4 Ms. Corn, do you have anything?

5 MS. CORN: No. We have nothing to say, Your Honor.

6 THE COURT: Back to you, Ms. Gentry. My issue  
7 still, as I see it, is whether there's anything for me to  
8 decide. Because, on the one hand, it appears to me that  
9 you're asking me to enjoin the Ohio Supreme Court from  
10 making a decision in this case.

11 MS. GENTRY: Yes, Your Honor. That's exactly what  
12 we're asking because we believe once the Supreme Court  
13 rules, that case will be over, there's nothing left to  
14 enjoin. Instead, we'll have a mess trying to figure out  
15 how to reconcile if it can even be done with the two  
16 different decisions, assuming they conflict. And if they  
17 can't be reconciled, then there's going to be a huge  
18 dispute as to which one controls.

19 We think the Court is well within its rights to  
20 protect its jurisdiction by enjoining relators from  
21 pursuing the state court case. Your Honor, if you'd like  
22 us to brief the ripeness issue, we can do that.

23 THE COURT: Well, I think that would be helpful, but  
24 that doesn't address your immediate concerns that would --  
25 I'm just trying to determine on what authority I can enjoin

the Supreme Court from discharging its lawful duties in deciding cases that are filed before it. It's like I'm reaching over into the state system and saying because I have ruled on this issue in a case over which I'm presiding, you're prohibited from considering that issue.

MS. GENTRY: Your Honor, I understand there are sensitive federalism concerns here, and we're certainly sensitive to that ourselves. That's why we've asked you not to enjoin the court, but rather to enjoin the relators from proceeding with their action.

THE COURT: How do I have jurisdiction over the relators?

MS. GENTRY: Because they are officials of the state of Ohio, which is a party to the case.

MS. LEYTON: This is Stacey Leyton. If I may add to that. Ms. Gentry is correct that we have taken the position and explained in our brief why the relators are parties to this case. But the All Writs Act expressly provides authority to issue injunctions that are necessary in order to protect the jurisdiction of this court. We've briefed a number of cases in which federal courts have enjoined state court proceedings, or have enjoined parties from proceeding in state court proceedings in order to protect its jurisdiction or prevent the re-litigation of issues that were resolved in the federal court. And the

1       All Writs Act does permit injunctions to issue against  
2       nonparties, if there is any doubt as to whether the  
3       relators are parties.

4                    MR. MCTIGUE: This is Don McTigue. May I add  
5       something to that?

6                    THE COURT: Certainly you may.

7                    MR. MCTIGUE: You asked the question initially about  
8       whether or not there's been a violation by the relators of  
9       the consent decree. And I believe Ms. Gentry answered that  
10      she believes going to court in and of itself to seek an  
11      order to essentially undo the consent decree can be  
12      considered a violation, and I agree with that. But, even  
13      short of that, the purpose of, of course, injunctive relief  
14      is to prevent harm before it happens. There has to be a  
15      threat of immediate harm, and that's when preliminary and  
16      temporary injunctive relief can be granted, before the harm  
17      actually occurs.

18                   Now, we don't know how the Supreme Court, the Ohio  
19      Supreme Court, will decide that case. On the other hand,  
20      we know that a party to the NEOCH consent decree, the State  
21      of Ohio and the general assembly which was also represented  
22      in the consent decree, have gone to another court seeking  
23      to get essentially out from under the consent decree. And  
24      that has at least created, at a minimum, a threat of  
25      immediate harm to the plaintiffs in the NEOCH case because

1 it's an attack on the consent decree.

2 THE COURT: Mr. Dornette, one additional question  
3 that I have along those lines. Paragraph 11 of the consent  
4 decree provides that any of the parties may -- quote, any  
5 of the parties may file a motion with the Court to modify,  
6 extend, or terminate this decree for good cause shown.

7 Now, instead of coming to me to have it terminated  
8 because it conflicts with state law, or modified because it  
9 conflicts with state law, you're going to a different  
10 forum. You're going to the Ohio Supreme Court. Why is  
11 that not just kind of your basic forum shopping 101?

12 MR. DORNETTE: Your Honor, as I read paragraph 11,  
13 it refers to parties. And I do not agree with -- and we  
14 obviously can and will brief the subject, but I do not  
15 agree with the statements that have been made that  
16 Mr. Niehaus and Mr. Blessing, because they are state  
17 legislators in Ohio, are parties by virtue of the fact that  
18 the State of Ohio moved to intervene. The State of Ohio  
19 includes the Ohio Supreme Court. I don't know that anyone  
20 would make the argument that individual justices of the  
21 Ohio Supreme Court are parties to that consent decree.

22 THE COURT: Okay. Let's assume for a moment,  
23 without me deciding that argument is ripe, why didn't you  
24 seek to intervene?

25 MR. DORNETTE: Well, Your Honor, this is a

1                   fundamental question of Ohio Constitutional law that  
2                   should, I believe, in the first instance, be decided by the  
3                   Ohio Supreme Court.

4                   THE COURT: Well, why is this not a question of  
5                   federal law since it involves the right to vote? I don't  
6                   know that there's anything more central to the federal  
7                   scheme than the right to participate in the electoral  
8                   process. And you have acknowledged yourself that the  
9                   supremacy clause makes federal law supreme. This is going  
10                   to certainly bear on a federal election. It's not like  
11                   this is a local election with no implications for the  
12                   federal system.

13                   MR. DORNETTE: Your Honor, the question we have  
14                   asked of the Ohio Supreme Court is the procedural question  
15                   of what is the authority of an elected member of the  
16                   executive department of the Ohio government to modify laws  
17                   that have been passed by the state legislature. It doesn't  
18                   have to do with federal voting rights.

19                   THE COURT: Wait a minute. This case is about  
20                   voting rights, Mr. Dornette. It's not about state  
21                   transportation systems. It's not about something that's  
22                   uniquely state. It's about elections. The consent decree  
23                   dealt with, among other things, provisional ballots. It  
24                   dealt with voting.

25                   In your case, you've relied on the *Painter* case and

1 you said that the Ohio Supreme Court's decision was in  
2 conflict with the consent decree on the issue of voting.  
3 So this is about voting, Mr. Dornette. Let's be clear  
4 here. This is about voting. That's what this case arises  
5 out of. It arises on an issue relating to voting.

6 MR. DORNETTE: The case before Your Honor arises  
7 under that. The issue that we've presented to the Ohio  
8 Supreme Court is a narrow issue that is related  
9 specifically to the authority of elected members of the  
10 executive department of the State of Ohio to modify, by  
11 entering into consent decrees, state law. In that respect,  
12 that issue, that precise issue, is a procedural issue under  
13 the Ohio Constitution rather than something that impacts  
14 itself to voting rights.

15 MS. GENTRY: Your Honor, may I respond?

16 THE COURT: Certainly.

17 MS. GENTRY: Your Honor, there are two problems, at  
18 least two problems with what Mr. Dornette just said. The  
19 first is that although he's casting this as a narrow  
20 procedural question for the Supreme Court, the relief he is  
21 seeking is to essentially nullify the decree by ordering  
22 Secretary Husted, who is a party to the decree, not to  
23 comply with it and instead to issue directives that are  
24 directly in conflict with it. Although he is trying to  
25 cast this as a narrow procedural issue, it is actually a

1 direct collateral attack on the consent decree.

2 The second problem is that even if you take him at  
3 his word that it's just a narrow procedural issue, it's  
4 based on a misstatement of facts. The question that  
5 they've raised to the Ohio Supreme Court is whether the  
6 secretary of state has the authority to enter into a  
7 consent decree. While that's true that happened here, the  
8 State of Ohio also entered into the consent decree, which  
9 is something they haven't told the Ohio Supreme Court. So  
10 the fact that the State of Ohio has entered into the  
11 consent decree, I think, changes the situation completely,  
12 and they have not addressed that.

13 THE COURT: How does it change the situation  
14 completely?

15 MS. GENTRY: Your Honor, their legal theory in the  
16 Ohio Supreme Court is that the Ohio Constitution provides  
17 that only the general assembly can suspend laws. They're  
18 arguing that the secretary of state does not have the power  
19 to suspend laws. However, the State Of Ohio intervened in  
20 this action to protect the interests of the general  
21 assembly. That's in the Sixth Circuit opinion allowing  
22 them to intervene. So in this case, the general assembly,  
23 through the State of Ohio, actually agreed to the consent  
24 decree.

25 MR. DORNETTE: Your Honor, may I respond?

THE COURT: Certainly you may.

MR. DORNETTE: If one goes and looks at the transcript of the presentation to Your Honor of the consent decree, there was counsel there for the plaintiffs, and there was counsel there for the secretary of state, and there was not counsel there for any other party. So the notion somehow that the general assembly agreed to the consent decree just is not factual. Again, we can get into that, or could get into that in briefing on this.

THE COURT: Well, in Roman Numeral II, paragraph 2, it says that the parties bound by the decree -- the order shall be binding upon the defendants and their employees, agents and representatives. The secretary of state will issue directives to the boards of election to follow this decree, and will use her best efforts to enforce the decree and all related directives if put on notice of any alleged violations.

It's not clear, from this document alone, that either of you is correct.

MS. GENTRY: Your Honor, we did cite an affidavit from the State of Ohio's counsel who -- it was about a fee dispute, but she said she approved the consent decree on behalf of the State of Ohio, and she was the client contact for the State of Ohio.

THE COURT: I know that. I understand that. And

1 you're right about the Sixth Circuit opinion. I'm simply  
2 saying that the consent decree doesn't make either of you  
3 clearly right, as people like to say in the law.

4 I want to take this matter under advisement. I  
5 think that there is merit to the argument. My concern,  
6 however -- I have a number of concerns. One of my concerns  
7 is the whole notion that this is not about voting. This is  
8 about voting. That's all this is about. I don't know that  
9 as a -- just as a matter of policy, as a *ratio decidendi*, a  
10 matter of legal policy, you would want to have a  
11 circumstance where one secretary of state enters into a  
12 consent decree and, then, when the parties change or when  
13 there is a new secretary of state from a different party,  
14 for that matter it could be from the same party, doesn't  
15 like that consent decree, then we'll have this type of  
16 lawsuit. It was a binding consent decree.

17 I'm also concerned by the fact that you go,  
18 Mr. Dornette, to the Supreme Court without seeking to  
19 intervene here. I understand your rationale for doing so,  
20 but I just, in some fundamental ways, disagree with it  
21 because I think this is about voting.

22 On the other hand, I'm not sure, Ms. Gentry and  
23 Ms. Leyton, that I can enjoin the Supreme Court from acting  
24 under the circumstances of this case. I need to study more  
25 closely the question of whether I can enjoin the relators

1 from pursuing their writ in the Ohio Supreme Court. That's  
2 the matter that I will, over the next 24 hours or so,  
3 probably devote most of my time to looking at.

4 So, unless someone else has additional arguments,  
5 I'm going to adjourn this conference, which I will, for the  
6 record, style as a 65.1 conference, and give this some  
7 consideration. I will provide an answer by close of  
8 business tomorrow.

9 MR. DORNETTE: Thank you, Your Honor.

10 MS. GENTRY: Thank you, Your Honor.

11 THE COURT: Thank you, everyone.

12 MR. DORNETTE: Your Honor, would you care to have a  
13 brief from us?

14 THE COURT: You haven't submitted any briefs yet,  
15 have you?

16 MR. DORNETTE: We have not, Your Honor.

17 THE COURT: Okay.

18 MR. DORNETTE: I don't know that I can get it in by  
19 noon tomorrow, but...

20 THE COURT: I'm sure that there's more than a  
21 handful of bright, young associates there at Taft who would  
22 like nothing better than to spend the rest of this evening  
23 researching and writing something for your approval and  
24 editing. So, yes, submit a brief just on the  
25 jurisdictional issue. The plaintiffs have given me

1 sufficient information that they can stand on, as far as  
2 jurisdiction is concerned and my power to enjoin both the  
3 Ohio Supreme Court and the relators. So why don't you  
4 respond to that jurisdictional issue by noon tomorrow.

5 MR. DORNETTE: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. CHANDRA: Your Honor, Subodh Chandra. May I add  
8 one other thing?

9 THE COURT: Certainly.

10 MR. CHANDRA: Back to the point you were closing  
11 with when you were listing the issues of your concern, I  
12 wanted to just address one point that may have gotten lost  
13 in the conversation, or maybe you did hear it. These  
14 legislative leaders, when they filed before the Ohio  
15 Supreme Court, were clearly stating that they were doing so  
16 in their official capacity; not just random individuals off  
17 the street, but in their official capacity. As you know  
18 from your handling of countless civil rights cases,  
19 whenever an official is named in their official capacity,  
20 they're simply standing in for whatever governmental entity  
21 it is they represent.

22 You may recall, and in the Sixth Circuit decisions  
23 Ms. Gentry pointed out, that the whole reason the State of  
24 Ohio intervened when plaintiffs originally sued then  
25 Secretary of State Blackwell, which is when we started in

1                   this case, the whole reason they intervened very quickly  
2                   was they were asserting that the general assembly, which  
3                   had adopted the laws in question, had an independent  
4                   interest in vindicating them.

5                   So those dots all have to be connected because the  
6                   State of Ohio intervened, they intervened successfully,  
7                   they are named in the consent decree; you have the Jennings  
8                   affidavit where she affirms their interest in this. They  
9                   certainly never objected to any of the stuff at the time.  
10                  And now you have these legislative leaders saying based on  
11                  their official capacity that's why they're going to the  
12                  Ohio Supreme Court. In their official capacity, they're  
13                  going as representatives of the general assembly, i.e., the  
14                  State of Ohio. That's why we believe -- that sort of  
15                  crystallizes why we believe you do have jurisdiction over  
16                  them, you do have the ability to speak to them, and they  
17                  are acting in defiance of the consent decree.

18                  THE COURT: Thank you, Mr. Chandra.

19                  MR. CHANDRA: Thank you, Your Honor.

20                  THE COURT: Thank you very much, everyone.

21                  Mr. Dornette, I'll look forward to your brief at  
22                  noon tomorrow.

23                  MR. DORNETTE: Thank you, Your Honor.

24                  THE COURT: Take care, everyone. Thank you.

25                  (Proceedings concluded at 4:38 p.m)

# C E R T I F I C A T E

I, Shawna J. Evans, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Algenon L. Marbley, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Shawna J. Evans  
Shawna J. Evans, RMR  
Official Federal Court Reporter